



Federal Communications Commission
Washington, D.C. 20554

April 12, 2021

In Reply Refer to:
1800B3-SDW

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Tri-Cities Broadcasting Foundation
c/o Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 21st Rd. N
Arlington, VA 22201

WGHN, Inc.
c/o Susan A Marshall, Esq. & Anne Goodwin Crump, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street Eleventh Floor
Arlington, VA 22209

In re: Tri-Cities Broadcasting Foundation
WAWL-LP, Grand Haven, MI
Facility ID 196109
Application File No. 0000114275

Letter of Inquiry – Response Required

Dear Counsel:

We are currently evaluating a Petition to Deny (Petition) filed regarding the license renewal application¹ (Application) of low power FM (LPFM) station WAWL-LP, Grand Haven, Michigan, licensed to Tri-Cities Broadcasting Foundation (Licensee). The Petition was filed on September 1, 2020, by WGHN, Inc. (WGHN).² Tri-Cities Broadcasting filed an opposition (Opposition) to the Petition on September 30, 2020,³ and WGHN filed a reply (Reply) to the Opposition on October 21, 2020.⁴ In order to evaluate the arguments raised, we request the additional information described below.

Background. The Media Bureau (Bureau) is investigating potential statutory and rule violations of Section 399b of the Communications Act of 1934, as amended (Act), and sections 73.503 and 73.801 of the FCC's Rules (Rules) related to underwriting for LPFM stations.

¹ Application File No. 0000114275 (filed May 26, 2020).

² Pleading File No. 0000120991 (filed Sept. 1, 2020).

³ Pleading File No. 0000123270 (filed Sept. 30, 2020).

⁴ Pleading File No. 0000124938 (file Oct.21, 2020).

The Underwriting Laws (as defined herein) prohibit LPFM stations from broadcasting advertisements.⁵ Although contributors of funds to LPFM stations may receive on-air acknowledgments of their support, such acknowledgments may be for identification purposes only and must not promote the contributors' businesses, products, or services.⁶ Such announcements must not contain calls to action, comparative or qualitative descriptions, inducements to buy, sell, rent, or lease, or price information.⁷ The Petition alleged, among other potential violations, that the Licensee broadcast prohibited advertisements on WAWL-LP, the station that is the subject of the Renewal Application.⁸

The Bureau is investigating whether the Licensee has broadcast advertisements in violation of the Underwriting Laws.⁹ We direct the Licensee, pursuant to sections 4(i), 4(j), 308(b) and 403 of the Act, 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403, to provide responses to the following inquiries, within 30 calendar days from the date of this letter. The Licensee may supplement its responses with additional relevant information pursuant to sections 1.17 and 1.88 of the Rules.¹⁰

Accordingly, the Licensee is directed to submit, within thirty (30) days of the date of this letter, truthful and complete responses to the following inquiries, with a copy served on each entity listed as receiving a copy of this letter. We will dismiss Licensee's Renewal Application pursuant to section 73.3568(a)(1) of the Rules¹¹ unless we receive a complete response to this letter from that Licensee within 30 calendar days of the date of this letter.

Instructions

If the Licensee requests that any information or Documents, as defined herein, responsive to this letter be treated in a confidential manner, the Licensee shall submit, along with such information or Documents a request for confidential treatment which complies with the requirements of section 0.459 of the Rules,¹² including the standards of specificity set forth therein. Accordingly, "blanket" requests for confidentiality of a large set of Documents are unacceptable. Pursuant to section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of section 0.459.

If the Licensee withholds any information or Documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item, the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

⁵ See 47 U.S.C. § 399b; 47 CFR §§ 73.503(d), 73.801.

⁶ See Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, *Commission Policy Concerning the Noncommercial Nature of Educational Broad. Stations*, Public Notice, 7 FCC Rcd 827 (1992).

⁷ See *id.*; *Xavier Univ.*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4921, para. 6 (1990).

⁸ See Petition.

⁹ See 47 U.S.C. § 399b; 47 CFR §§ 73.503(d), 73.801.

¹⁰ 47 CFR §§ 1.17, 1.88.

¹¹ 47 CFR § 73.3568(a)(1) ("Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal.").

¹² 47 CFR § 0.459.

Each requested Document (including photographs), as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein, unless the Document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry herein. The Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

If a Document responsive to any inquiry made herein existed but is no longer available, or if the Licensee is unable for any reason to produce a Document responsive to any inquiry, the Licensee shall identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, the Licensee is directed to retain the originals of those Documents for twelve (12) months from the date of this letter unless the Licensee is directed or informed by the Bureau in writing to retain such Documents for some shorter or longer period of time.

The specific inquiries made herein are continuing in nature. The Licensee is required to produce in the future all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, the Licensee must supplement its response (a) if the Licensee learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless the Stations are directed or informed by the Bureau in writing that the Stations' obligation to update the record will continue for some shorter or longer period of time.

For each Document or statement submitted in response to the inquiries below, the Licensee shall indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the Document was retrieved. If any Document is not dated, the Licensee shall state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Licensee must identify with reasonable specificity all Documents provided in response to these inquiries.

Unless otherwise indicated, the period of time covered by these inquiries is June 6, 2014, when the WAWL-LP was first licensed to operate, to the present.

Definitions

For purposes of this letter, in addition to the terms defined elsewhere in this letter, the following definitions apply:

The word "any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

“Advertisements” shall mean programming material broadcast “in exchange for any remuneration” and intended to “promote any service, facility, or product” offered by for-profit entities, as defined and used in 47 U.S.C. § 399b and 47 CFR § 73.503.

“Announcements” shall mean messages, or substantially similar messages, as identified in Exhibit 1 to the Petition.

“Document(s)” and “Documentation” shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any broadcast, radio or television program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, text message, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minutes, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, drives, disks and such codes or instructions as will transform such computer materials into easily understandable form).

“FCC” or “Commission” means the Federal Communications Commission.

“Licensee” shall mean Tri-Cities Broadcasting Foundation, and any predecessor-in-interest, affiliate, parent company, wholly or partially owned subsidiary, other affiliated company or business, and all owners, including but not limited to, partners or principals and receivers, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

“LPFM” means low power FM radio.

“Renewal Application” shall mean the pending license renewal applications of Tri-Cities Broadcasting Foundation (Application File No. 0000114275), including any amendments submitted to the FCC as of the date of this letter by or on behalf of the Station.

“Station” shall mean WAWL-LP, Grand Haven, MI.

“Underwriting Laws” shall mean section 399b of the Act, sections 73.503(d) and 73.801 of the Rules related to underwriting requirements for LPFM stations, and the decisions and orders of the Commission interpreting these provisions.

Inquiries: Documents and Information to Be Provided

We direct you, pursuant to sections 4(i), 4(j), 308(b) and 403 of the Act, 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403, to respond to the following inquiries, *within thirty (30) calendar days* from the date of this letter:

1. State whether the programming that Licensee streams on its internet streaming sites, “Online Radio Box”¹³ and WAWL’s website¹⁴, is identical to the programming that Licensee broadcasts over-the-air on WAWL-LP. If the programming is not identical, provide a narrative description detailing any differences.
2. State whether the Licensee broadcast the Announcements on its Online Radio Box, on WAWL’s website, or both.
3. Confirm or deny the accuracy of each of the transcribed Announcements.
 - a. If any transcript is inaccurate, please describe any inaccuracies and provide corrected versions of each Announcement. Insofar as the Announcement or any parts thereof are incomplete, provide a complete transcription thereof.
4. State whether the Licensee broadcast the Announcements over-the-air on WAWL-LP at any point since the station commenced operations until the present. If so, for each such Announcement:
 - a. Specify all date(s) and time(s) that the Announcement aired.
 - b. Produce copies of all Documents (and a narrative response explaining such Documents) that discuss, reproduce, summarize, or otherwise relate to the Announcements.
 - c. Identify each underwriter of the Announcement, if any, and identify each person that requested that the Licensee broadcast the Announcement.
 - d. Specify the terms of any agreement(s) between the Licensee and any person requesting that the Licensee broadcast the Announcement. Produce all Documents (and a narrative response explaining such Documents) that discuss, memorialize, reproduce, or summarize any agreement(s) between Licensee and any person requesting that the Announcement be broadcast.
 - e. State whether the person requesting that the Announcement be aired provided, or promised to provide, the Licensee, its employees (including, without limitation, officers, managers, and programming personnel), or contractors any form of consideration¹⁵ in exchange for the broadcast of the Announcements.
 - i. If so, describe the value, nature, form, and extent of such consideration. Produce all Documents (and a narrative response explaining such Documents) that discuss, memorialize, reproduce, or summarize this exchange, and any Documents reflecting any contractual and financial arrangements with such person and such person’s non-profit status, if any.
 - f. State whether the person requesting that the Announcement be aired is a general contributor or supporter of the Station or Licensee, or is instead a sponsor or underwriter of a specific program or both, and, if a sponsor or underwriter of a specific program, specify this program.
 - g. State whether the person requesting that the Announcement be aired was incorporated, operated, or conducted business on a not-for-profit status, whether determined or claimed under federal or state law, and specify the facts supporting your response.

¹³ Online Box Radio, WAWL, <https://onlineradiobox.com/us/wawlfm/>.

¹⁴ WAWL-LP’s website, <https://1035wawl.com/>, includes a link that directs users to “click here to listen live 24/7.”

¹⁵ Compensation or remuneration may not necessarily be financial, but also includes other forms of consideration, including barter/broker arrangements and the exchange of goods or services. *See, e.g., Fuqua Communications, Inc.*, Notice of Apparent Liability, 30 FCC 2d 94, 97 (1971) (licensee’s provision of free advertising for disc jockeys’ private business ventures in exchange for more favorable terms constituted consideration to the licensee).

- h. Provide a copy of each Announcement as it was broadcast over-the-air on WAWL-LP in a format that is playable using Microsoft Windows Media Player on a compact disc (CD-R) labeled with the Station's call sign, program name, Announcement name, title, and/or identification code; and broadcast date and time.
 - i. State whether the language contained in each Announcement was modified in any manner after it first aired. If the Announcement was modified in any manner, list each change, provide the date of the change, and a narrative description detailing the reasons for each such change.
 - j. Provide a narrative detailing the placement of the Announcement in relation other programming, including whether the Announcement interrupted any regular programming.
5. Describe any past and current policies for accepting or soliciting donations Licensee has employed or currently employ relating to the Underwriting Laws, including but not limited to those for accepting donations, airing donor and underwriting announcements, and/or ensuring compliance with the Underwriting Laws and the sponsorship identification requirements set forth in sections 317 of the Act and section 73.1212 of the Rules, including compliance therewith.
- a. Produce all Documents (and a narrative response explaining such Documents) that discuss, memorialize, summarize, or provide guidance as to such policies or procedures or otherwise support the response to this inquiry.

Instructions

The Station's responses to Questions 1-6 must be supported by affidavits or declarations attesting that the responses are complete and accurate, signed either by representatives of each Station, or by one or more persons with personal knowledge of the response. In addition to the affidavits or declarations above, we direct the Stations to support their responses to these inquiries with an affidavit or declaration under penalty of perjury, signed and dated by one of their directors, verifying the truth and accuracy of the information therein and that all of the information and Documentation specified by this letter which are in the possession, custody, control or knowledge of the Stations (including all parties to the Applications) have been produced. If multiple board members or representatives contribute to the responses, in addition to such general affidavit or declaration of a Station director, the Stations must provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. To knowingly and willfully make any false statement or conceal any material fact in reply to this letter is punishable by fine or imprisonment.¹⁶ Failure to respond appropriately to this letter may constitute a violation of the Act and the Rules.¹⁷

The Stations shall direct their letter responses, if any, by mail to the attention of Albert Shuldiner, Audio Division, Media Bureau, Federal Communications Commission, Office of the Secretary, 45 L Street, NE, Room 4.350, Washington, DC 20554.¹⁸ An electronic courtesy copy may be sent to

¹⁶ See 18 U.S.C. § 1001; see also 47 CFR § 1.17.

¹⁷ See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, n.36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (EB 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (EB 2003).

¹⁸ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger

alexander.sanjenis@fcc.gov. Additionally, copies must be served by U.S. Mail on **WGHN, Inc., at the address provided below. WGHN, Inc., will have an opportunity to submit comments within fifteen days of the Station's filing of the responses, with a copy to be served by U.S. Mail on the Stations and their counsel, where applicable.**

Any requests for an extension of time in which to respond to this letter must be: 1) filed prior to the thirty-day deadline for filing a response; 2) supported by an affidavit or declaration from a party to the Renewal Application; and 3) served on WGHN, Inc., at the address provided below.

Conclusion

Failure to respond in full within the time period specified shall result in dismissal of the subject application for failure to respond to official correspondence pursuant to sections 73.801 and 73.3568(a)(1) of the Rules.¹⁹

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: WGHN, Inc.
c/o Susan A Marshall, Esq. & Anne Goodwin Crump, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street Eleventh Floor
Arlington, VA 22209

delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

¹⁹ 47 CFR §§ 73.801, 73.3568(a)(1).